IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE**

**and**
**THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY**

**WRIT APPEAL NO : 474 of 2005**

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 31/01/2005 in WP NO : 1132 OF 2005 on the file of the High Court.)

Between:

P. Rajalingam S/o Veeraiah
R/o 5-3-742, Sankar Bagh, Hyderabad

**..... APPELLANT**

AND

1 The Deputy Commissioner of Endowments Hyderabad Boggulakunta, Tilak Road, abids, Hyderabad
2 The Commissioner of Endowments, Boggulakunta, Tilak Road, Abids, Hyderabad

**.....RESPONDENT(S)**

**Counsel for the Appellant:MR.M.VIDYASAGAR**

**Counsel for the Respondents: GP FOR ENDOWMENTS**

**The Court made the following Oral Judgment: (per Sri Devinder Gupta, CJ)**

Challenge by the appellant is to the order of the learned single judge dismissing Writ Petition No. 1132 of 2005 on 31st January, 2005.

Facts in brief are that appellant-petitioner has filed O.A. No. 1 of 1986 under Section 87 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (hereinafter referred to as the "Act") before the 1st respondent-Deputy Commissioner of Endowments seeking declaration that property in question does not belong to Tulja Bhavani Temple and it is his personal property. After making necessary enquiries and hearing the parties, the 1st respondent passed an order on 26.4.2000. As per the provisions of Section 87 of the Act, any decision or order of Deputy Commissioner on confirmation by the Commissioner is required to be published in the prescribed manner and any decision or order of Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment as per Sub-Section (5) of Section 87, shall not take effect unless such decision or order is confirmed by an order of the Commissioner. The Commissioner in his turn on 25.11.2004 passed an order saying that the judgment in O.A. No.1 of 1986 passed by the Deputy Commissioner on 26.4.2000 is rejected. This order was communicated to the appellant through covering letter of Deputy Commissioner on 27.12.2004. Appellant, thereafter intended to prefer appeal and thus required copy of the said order in O.A. No. 1 of 1986, dated 26.4.2000 passed by the Deputy Commissioner of Endowments which was not supplied and thus preferred Writ Petition under Article 226 of the Constitution of India to declare the action of Respondent No.1 in not issuing copy of the order passed on 26.4.2000 in O.A. No.1 of 1986 as illegal and arbitrary.

Learned single judge dismissed the writ petition on the ground that where the Commissioner refuses to confirm the order passed by the Deputy Commissioner, the decision taken or order passed by the Deputy Commissioner ceases to have any

adjudicatory effect. At the most, it remains a tenatative opinion, not finding favour of the Commissioner. Therefore, no rights as such can be said to have accrued to the appellant on the strength of such tenatative opinion. Such decision or order can never constitute subject matter of an appeal and that being the case, no party to the proceedings can have a right to insist for furnishing copies of the same. The writ petition was dismissed saying that the 2nd respondent cannot be insisted for furnishing copy of the decision or order submitted by him to the 1st respondent, refusing to confirm it.

Learned counsel for the appellant has drawn our attention to another decision of the same judge who disposed of Writ Petition No. 25346 of 2004 and the said decision is reported as S.T.V. RAGHUNATHACHARY vs. COMMISSIONER, ENDOWMENTS DEPARTMENT, HYDERABAD & OTHERS (2005(1) ALD 683). The decision was rendered by the learned single judge on 18.1.2005 disposing of the writ petition filed by S.T.V. Raghunathachary.

Facts in the said case were that petitioner therein had challenged a notice of hearing dated 27.12.2004 issued by the Deputy Commissioner. The Executive Officer of Sri Venkateswara Swamy Temple, Gaddi Annaram, Hyderabad filed O.A. No.113 of 1996 before the Deputy Commissioner of Endowments, Hyderabad under Section 87 of the Act seeking a declaration that the properties mentioned in the application belong to the temple. By order dated 20.7.2000, decision was rendered by the Deputy Commissioner, which, of course had to be sent to Commissioner for confirmation. The Commissioner, in his turn, on 28.6.2004 refused to confirm the order of Deputy Commissioner. Certain deficiencies in the matter were detected and while refusing to confirm the order of Deputy Commissioner, directions were issued to the Deputy Commissioner to take necessary steps to implead the Assistant Commissioner of Endowments, Hyderabad etc. When the Deputy Commissioner issued notice in the said proceedings, petitioner therein filed Writ Petition. On behalf

of the writ petitioner, it was urged before the learned single judge that the effect of the order dated 28.6.2004 passed by the Commissioner is to remand the matter to the Deputy Commissioner and such power does not vest in him and it is only when the Commissioner exercises power of appeal or revision, he can remand the matter and not otherwise. It was also pointed out by the learned counsel for the petitioner saying that petitioner had not been issued Certified copy of the order dated 20.7.2000 passed by the Deputy Commissioner or order dated 28.6.2004 passed by the Commissioner.

Learned single Judge on examination of the provisions of Sections 87 and 88 of the Act, observed that Section 88 provides for an appeal against the decision of the Deputy Commissioner or of the order passed by the Deputy Commissioner. If the Commissioner confirms the decision of the Deputy Commissioner, the order of Commissioner becomes appealable and if the Commissioner refuses to confirm the decision of the Deputy commissioner, the order of the Deputy Commissioner becomes unenforceable and it is only the decision of the Commissioner that becomes appealable and the petitioner can avail the remedy under Section 88 of the Act against the order of Commissioner. In those circumstances, the writ petition was disposed of with direction to the Commissioner and Deputy Commissioner to issue certified copies of the orders dated 20.7.2000 in O.A. No. 113 of 1996 containing the decision of the Deputy Commissioner and the order dated 28.6.2004 of the Commissioner in order to enable the writ petitioner to file an appeal.

We have gone through the judgments and the narrated facts and details and the observations of the learned single judge. Strangely, the same learned single judge on 18$^{th}$ January, 2005 in similar writ petition issued direction for supply of copies of the order passed by the Deputy Commissioner, which order was not confirmed by the Commissioner, but, in the order impugned in this appeal, which was passed thirteen(13) days thereafter, such a direction was not issued, though, in this case

also the order of Deputy Commissioner was not confirmed by the Commissioner.

Learned single judge could not have taken a different view than the one taken in a judgment rendered by him 13 days earlier. If the learned single judge was of the view that similar direction could not be issued, the only course open for him was to record his opinion and submit papers before the Chief Justice for placing it before the Division Bench.

In any case, we have examined the provisions of Sections 87 and 88 and no doubt an order of the Deputy Commissioner passed under Section 87 of the Act not being confirmed by the Commissioner, the same will not become enforceable, but, when a person aggrieved by the order of Commissioner would like to prefer appeal under Section 88 and would like to obtain Certified copy of the order of the Deputy Commissioner, may be, the same is not enforceable, but, the respondent cannot refuse to supply such a copy on usual charges. It was an innocuous prayer made in the writ petition that the writ petitioner wanted a copy of adjudication made by the Deputy Commissioner of Endowments after enquiry in the proceedings taken out under Section 87 of the Act. We can give a similar analogy that when in a Sessions Case, death sentence is imposed on accused by Sessions Judge, the order does not become enforceable unless it is confirmed by a Division Bench of the High Court. But, copy of the decision of the learned Sessions Judge has to be supplied to the party who has to argue the matter before the Division Bench of the High Court. Similarly, in the instant case, when the Deputy Commissioner on making due enquiry formed an opinion and passed an order, it has to go before the Commissioner, who may or may not confirm it, but the order of the Commissioner will become appealable. In case, he will not confirm the order of Deputy Commissioner and in support of his appeal, appellant will be entitled to make use of the reasons given by the Deputy Commissioner before the appellate authority.

In that view of the matter, the order of learned single judge being bad in law is liable

to be set aside. The writ petition deserves to be allowed.

The writ appeal is accordingly allowed and the impugned order is set aside. The writ petition is also allowed with a direction to the respondents to supply certified copy of the order dated 26.4.2000 made in O.A. No.1 of 1986 to the appellant within a period of two weeks from the date of receipt a copy of this order. It is made clear that on appeal being filed within a period of four weeks from the date of receipt of the order of the Deputy Commissioner by the appellant, appeal shall be treated as having been filed within the period of limitation and shall be decided in accordance with law on merits. No costs.

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DEVINDER GUPTA,CJ

DATE: 24th March, 2005

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B. SESHASAYANA REDDY,J

Pnb

**NOTE: L.R. COPY TO BE MARKED.**

One fair copy to the Honourable Sri Devinder Gupta, The Chief Justice (for his Lordships kind perusal)

One fair copy to the Honourable Sri Justice B. Seshasayana Reddy(for his Lordships kind perusal)

To

1 The Deputy Commissioner of Endowments Hyderabad Boggulakunta, Tilak Road, Abids, Hyderabad.
2 The Commissioner of Endowments, Boggulakunta, Tilak Road, Abids, Hyderabad

3 The Chief Judge, City Civil Court, Hyderabad

4 Two C.Cs. to the Government Pleader for Endowments, High Court Buildings, Hyderabad. (OUT)

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